

REMARKS

Claims 1 to 88 were pending in the application at the time of the examination. Claims 1 to 88 stand provisionally rejected for obviousness-type double patenting. Claims 1 to 88 stand rejected as obvious.

Claims 1 to 9, 21 to 29, 41 to 49 and 61 to 77 stand provisionally rejected on the ground of obviousness-type double patenting over Claim 1 to 9, 20 to 28, 39 to 47, and 58 to 74 in view of copending U.S. Patent Application Serial No. 10/687,217, hereinafter referred to as the '217 application.

Claims 1, 10, 21, 41, 50, and 78 are amended to make explicit that which was implicit when the claims were interpreted in view of the specification as required in an obviousness rejection. The amendments are supported for example at least by Fig. 59.

Claims 3, 7, 18, 23, 27, 30, 38, 43, 47, 58, and 86 are amended to correct antecedent basis informalities introduced by the amendment of the corresponding independent claim.

Applicant respectfully submits that the obviousness-type double patenting rejection in view for the '217 application is moot. A review of PAIR for the '217 application shows that on December 12, 2007, over a month before the issuance of this action, a terminal disclaimer between the instant application and the '217 application was entered. Therefore, the instant rejection has no basis and is therefore moot. Applicant respectfully requests reconsideration and withdrawal of the obviousness-type double patenting rejection over Claims 1 to 9, 20 to 28, 39 to 47, and 58 to 74 in view of copending U.S. Patent Application Serial No. 10/687,217.

Claims 10 to 20, 30 to 40, 50 to 60, and 78 to 88 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 to 11, 22 to 32, 43 to 53, and 64 to 74 of copending U.S. Patent Application

No. 10/687,415, hereinafter referred to as the "'415 application".

Applicant respectfully traverses the obviousness-type double patenting rejection of each of Claims 10 to 20, 30 to 40, 50 to 60, and 78 to 88. For example, Claim 10 recites in part:

receiving, by said rights locker provider from said end-user device over said network, an indication of a user selection of one of said one or more authenticated rights locker access requests; and

accessing, by said rights locker provider, the contents of said rights locker according to a type of said rights token associated with said user selected one of said one or more authenticated rights locker access requests

The rejection admits that the '415 application fails to suggest or disclose these elements and instead asserts "would have been obvious next step in '415. It is well known in the art to select a desired content to access and receiving said content in response."

The rejection ignores the express claim limitations, i.e., fails to consider the claim as a whole, and rejects a gist of the claim—selecting a desired content and receiving the content in response. The MPEP expressly rejects this level of analysis. The MPEP directs:

Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole."

MPEP § 2141.02 II, 8th Ed., Rev. 6, p. 2100-124, (Sept. 2007).

The claim does not recite anything about receiving the content and instead recites that the rights locker provider accesses contents of the rights locker and further define how that access is determined "a type of the rights token." Thus, the accessing was modified to receiving and the receiving was rejected even though that is not what is recited in the claim.

Accordingly, a prima facie obviousness rejection has not been made. Applicant respectfully requests reconsideration and withdrawal of the obviousness-type double patenting rejection of each of Claims 10 to 20, 30 to 40, 50 to 60, and 78 to 88.

Claims 1 to 3, 6, 10 to 12, 15, 21 to 23, 26, 30 to 32, 35, 41 to 43, 46, 50 to 52, 55, 61 to 63, 66, 78 to 80 and 83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0024652, hereinafter referred to as Buhse in view of U.S. Patent No. 6,226,744, hereinafter referred to as Murphy.

Applicant respectfully traverses the obviousness rejection of each of Claims 1, 21, 41, and 61. Applicant notes that each of the elements in these claims is performed on an end-user device in conjunction either with information received from a user or with information either received from or sent to a rights locker provider. In contrast, the rejection relies upon a conglomeration of different pieces of Buhse and then modified this conglomeration based on Murphy.

The rejection failed to consider the claims as whole and failed to consider each of the references as a whole. For example, Claim 1 first recites "determining, on an end-user device, digital content to be made accessible via a rights locker." The rejection cited paragraph [0048] and Fig. 6B of Buhse as suggesting this element.

Paragraph [0048] of Buhse stated:

The Consumer purchases a digital product from a Content Distributor website, adds the product to a shopping cart, and checks out after providing payment information. The Distributor performs financial clearing.

This teaches only that a consumer purchases a digital product from a website and that the website does financial

clearing. This fails to suggest or teach anything about how the digital content is to be made accessible.

Fig. 6B of Buhse is "a software flow chart to implement the Rights Locker Component(RLC);" Fig. 6B describes only action performed by the Rights Locker Component. The rejection has failed to demonstrate any link between a determination being made on the user device about a rights locker and a purchase that is made. In fact, the process is exactly the opposite as taught by Buhse. Once the purchase is made, the other entities determine what is made available via the rights locker component. In fact, according to Buhse, the "OMS uses RLC 104 to provide intellectual property rights and security features." In particular,

[0033] The Rights Locker Component (RLC) 104 is the client's branded customer interface. It is a web site with the client's branding. Through this interface, the client can transfer rights for consumers to use a digital product to wireless, handheld, cable, or other devices. The RLC has the ability to handle multiple copies for a consumer and to allow the registration of multiple devices by a consumer. It can also administer volume licensing for tracking the usage of multiple consumers. Business rules for administering these rights can be set by the client or by a 3.sup.rd party

Buhse expressly distinguishes between a client and a consumer. The client is the entity that controls the RLC according to this paragraph, while the consumer is the end-user. Thus, initially, a consumer is cited as purchasing digital content. However Buhse expressly taught that it was not the consumer and an end-user device associated with the consumer that determined digital content to make available via the RLC, but rather the client that Buhse defines as being different from the consumer. Thus, taken as a whole, Buhse teaches away from the interpretation given in the rejection

The remainder of the rejection confuses elements associated with the client, which is different from the end-user, the consumer, and the end-user associated devices. The rejection has failed to cite any teaching in Buhse that the various operations cited are performed on an end-user device and in fact they are performed on a system that includes the OMS and RLC of Buhse. Buhse expressly taught that the operations were not performed on an end-user device and so teaches away from the interpretation in the rejection.

The rejection improperly cites to a conglomeration of client actions and actions on a system that are different from an end-user device. The additional information relied upon from Murphy fails to correct the basic teaching away by the primary reference. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 1, 21, 41, and 61.

Claims 2, 3 and 6 depend from Claim 1. Claims 22, 23, and 26 depend from Claim 21. Claims 42, 43 and 46 depend from Claim 41. Claims 62, 63, and 66 depend from Claim 61. Thus, each of these claims distinguishes over the combination for at least the same reasons as the independent claim from which it depends. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 2, 3, 6, 22, 23, 26, 42, 43, 46, 62, 63 and 66.

Applicant respectfully traverses the obviousness rejection of Claims 10, 30, 50, and 78. The rejection is improper because no motivation has been provided for combining the two references. Rather, Applicant's claim language is quoted and pieces from the two references selectively extracted and cited against portions of the claim. There is no rationale or reasoning as to why the pieces would be selectively extracted and combined. This alone is sufficient to overcome the rejection, because while KSR may have reduced

the showing required to combine references, it did not eliminate the need to provide a rationale for the combination.

In addition, the rejection goes against the express requirements of the MPEP. For example, Claim 10 recites:

receiving. . . a rights locker enrollment request .
. . . comprising a digital content request and enrollment authentication data

Thus, the claim defines a specific request that is received by a rights locker provider. The request includes two elements—a digital content request and enrollment authentication data. Both of these elements are received by a single entity—the rights locker provider.

In contrast, the rejection cited Buhse, paragraphs [0048], [0052], [0164], and [0171] as teaching receipt of such a request. However, when Buhse is considered as a whole, this is error and requires a change to the principles of operation of Buhse.

Paragraph [0048] of Buhse stated:

The Consumer purchases a digital product from a Content Distributor website, adds the product to a shopping cart, and checks out after providing payment information. The Distributor performs financial clearing.

Thus, Buhse taught that any digital content request was directed to the Content Distributor in the form of a selection for purchase. There is no teaching of a single request with two elements as in Claim 10 directed to the Content Distributor. To compensate for this deficiency the rejection cited the other three paragraphs. For example,

[0052] 5. The OMS 105 sends a rights update request to the Rights Locker 104 and sends a purchase response to the Distributor

At paragraph [0049], Buhse described that the action in paragraph [0052] is the result of the Distributor, and not the end-user device, sending a purchase request. A purchase request teaches or suggests nothing about a rights locker enrollment request as recited in Claim 10. Further, two different entities are involved--the Distributor and the OMS--as taught by Buhse and not the single entity recited in Claim 10.

[0164] In response to a create request, the RLC creates a new end-user RLC account using the account ID provided.

[0171] Create Rights Locker Account: OMS 105 requests the creation of an account on behalf of a consumer.

The rejection has now introduced three different requests: a purchase request from the Distributor; a rights update request from the OMS; and a create request from the OMS.

Distilling these different requests down to a single request received by a single entity and not multiple different entities requires that the principles of operation of Buhse be changed. Buhse clearly describes multiple different requests and multiple different entities and does not describe or teach a single entity that receives a single request having two elements from an end-user device. The MPEP directs:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

MPEP § 2143.01 VI, 8th Ed., Rev. 6, p. 2100-141, (Sept. 2007). The rejection failed to acknowledge the changes required to Buhse, and even if the rejection had acknowledged the changes, the MPEP directs that the proposed modification to arrive at

Applicant's invention is not appropriate because the proposed modification changes the principles of operation of Buhse.

Similar problems are associated with the tokens. The rejection cites to an entity that issues smart cards in Murphy and that entity puts tokens on the smart card. The cited section stated:

As shown in FIG. 3, a Certified Authority (CA) distributes smart card 10 to a user at step 50. Smart card 10 stores user information provided by the CA, such as tokens, digital signatures, certificates, tickets, PIN, human resources identification number, and so forth, or personal information provided by the user such as a social security number, birth date, mother's maiden name, etc.

Thus, "obtaining . . . one or more tokens that authenticate future access to a rights locker corresponding to said digital content," by the right locker provider have been reduced to just some tokens on a smart card. There has been no showing of how the primary reference would be modified to obtain such tokens. There has been no showing of how or why the tokens that are issued on a smart card would know anything about a rights locker at the time of issuance of the smart card. Accordingly, yet again, specific claims limitations are reduced to a gist "tokens" and those tokens are rejected.

Similarly, the tokens, recited in the claims, authenticate future access to a rights locker corresponding to digital content. This has been reduced to a single user authentication, which has nothing to do with the recited limitation. The reliance on a single sign-on has nothing to do with the explicit claim limitations and is but further evidence that explicit claim limitations have not been properly considered. Finally, the rejection has failed to explain how the primary reference would be modified with changing the principles of operation of the primary reference.

The rejection mischaracterizes both the references and fails to provide any rationale for the combination with the many modifications required. Therefore, the combination fails to render the claims obvious based on the MPEP. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 10, 30, 50, and 78.

Claims 11, 12 and 15 depend from Claim 10. Claims 31, 32, and 35 depend from Claim 30. Claims 51, 52 and 55 depend from Claim 50. Claims 79, 80, and 83 depend from Claim 78. Thus, each of these claims distinguishes over the combination for at least the same reasons as the independent claim from which it depends. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 11, 12, 15, 31, 32, 35, 51, 52, 55, 79, 80 and 83.

Claims 4, 5, 7 13, 14, 16, 18, 24, 25, 27, 33, 34, 36, 38 44, 45, 47, 53, 58 54, 56, 64, 65, 75 81, 82, 84 and 86 stand rejected under 35 U.S.C. § 103(a). Assuming the further combination of references is correct, the additional information relied upon from the references fails to correct the deficiencies of basic combination, as noted above, with respect to the independent claims from which these claims depend. Therefore, each of Claims 4, 5, 7 13, 14, 16, 18, 24, 25, 27, 33, 34, 36, 38 44, 45, 47, 53, 58 54, 56, 64, 65, 75 81, 82, 84 and 86 distinguishes over the combination of references. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 4, 5, 7 13, 14, 16, 18, 24, 25, 27, 33, 34, 36, 38 44, 45, 47, 53, 58 54, 56, 64, 65, 75 81, 82, 84 and 86.

Claims 8, 19, 28, 39, 48, 59, 76, and 87 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Buhse and Murphy in view of Steven W. Disbrow, "Use cookies to maintain state in Web applications," Active Server Developer's Journal, Vol. 4, Issue 9, pg. 7,3

Louisville, KY (Sept. 2000). Assuming the combination of references is correct, the additional information relied upon from the third reference fails to correct the deficiencies of the combination of Buhse and Murphy, as noted above, with respect to the independent claims from which these claims depend. Therefore, each of Claims 8, 19, 28, 39, 48, 59, 76, and 87 distinguishes over the combination of references. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 8, 19, 28, 39, 48, 59, 76, and 87.

Claims 9, 20, 29, 40, 49, 60, 77, and 88 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Buhse and Murphy in view of U.S. Patent Application Publication No. 2002/0156905. Assuming the combination of references is correct, the additional information relied upon from the third reference fails to correct the deficiencies of the combination of Buhse and Murphy, as noted above, with respect to the independent claims from which these claims depend. Therefore, each of Claims 9, 20, 29, 40, 49, 60, 77, and 88 distinguishes over the combination of references. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 9, 20, 29, 40, 49, 60, 77, and 88.

Claims 68 to 74 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Buhse and Murphy in view of Official Notice. Assuming that both the use of Official Notice, and the combination of references is correct, the additional information relied upon from the Official Notice fails to correct the deficiencies of the primary combination as noted above, with respect to the independent claims from which these claims depend. Therefore, each of Claims 68 to 74 distinguishes over the combination of references. Applicant respectfully requests reconsideration

Appl. No. 10/687,488

Amdt. dated April 24, 2008

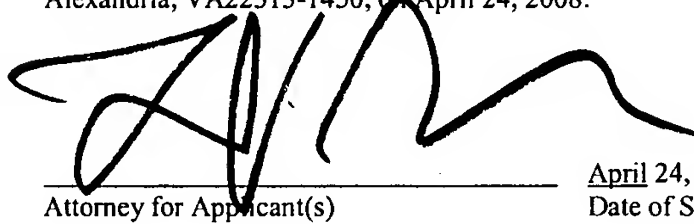
Reply to Office Action of January 24, 2008

and withdrawal of the obviousness rejection of each of Claims 68 to 74.

Claims 1 to 88 remain in the application. Claims 1, 3, 7, 10, 18, 21, 23, 27, 30, 38, 41, 43, 47, 50, 58, 78, and 86 have been amended. For the foregoing reasons, Applicant respectfully request allowance of all pending claims. If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 24, 2008.



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April 24, 2008
Date of Signature

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